

Woodsetton Charitable Trust

Report to Dudley M B C.

18th February 2013

The Woodsetton footpath.

LOCATION

This footpath, approaching 1 mile long runs across green undeveloped land following along the two sides of a large housing estate. Path one, runs from Tipton road (A457) to Parkes Hall Pool, whilst path two runs from the Pool towards High Arcal School along a green corridor shared with the Swan Brook and to underground pipelines carrying oil and high-pressure gas from the North Sea.

Path 1 is a part of the Limestone Walk between Wren's Nest and Sedgley Beacon, on its route from Dudley town to the Wolverhampton boundary. This is one of the Dudley footpath walks which are detailed on a set of individual leaflets in issued by Dudley Council. Both of these footpath's have been in regular use for over 40 years by local residents and children on their way to school.

THE S106 FOOTPATH AND LANDSCAPING OBLIGATION.

When A J Mucklow (builders) applied for planning permission to build an estate of around 90 dwellings, the inclusion of access, landscaping and footpath's on the surrounding green areas (about 7.5 acres), was a condition of the planning permission (see attached plan). As the estate was approaching completion Mucklow challenged the landscaping and footpath's on the grounds that it was too expensive for the size of the development, and they won their appeal.

However, they also wanted to add two further small sites to complete the development, and to obtain this permission Mucklow signed a S106 agreement for a much less ambitious scheme (some 2.5 acres) involving the surfacing of the footpath's and some planting along the boundary fence of the estate (see attached plan).

This S106 obligation was attached to the two additional building sites for which planning permission was given, with the work to be triggered by the completion of the last of the houses to be erected, which happened in 2012.

However, Dudley Council appears to have agreed that the builder who completed the last four houses has no obligation to fulfil the S106 agreement, so that the completion of the footpath and the planting agreed in 1998 will not take place; even though the occupants of the 90+ houses have paid towards this footpath within the price they paid for their homes.

It is worth noting that today (February 2013) for the first time in over 30 years. Neither of these footpath's can be walked, path 1 being blocked by a large amount of earth piled by the builder near the Tipton road end, and path 2 is blocked by an extremely boggy section caused by water flowing from the new building development.

FURTHER DETAILS.

The 1998 S106 agreement was attached to 2 small sites, one on Tipton Road with permission for 2 houses, and the other at Dearne Court with permission for 3 bungalows. These 2 building sites were sold on by Mucklow together with the surrounding land, the two sites with their planning permission and the S106 obligation for the footpath and landscaping.

The residential development on the Dearne court site was the last to be completed, being detailed in the original planning permission as being for three bungalows. Whilst this permission was still current the builder applied to change the development from 3 bungalows to 4 houses, which required no change in access, curtilage or services. This revision was entered as a new planning application, which was approved, and given a new planning permission number, and as there were now 4 instead of 3 dwellings and additional obligation charge of around £5000 appears to have been made.

There were therefore now 2 current planning permissions for this site, one for 3 bungalows and the other for 4 houses, and the builder had the choice of implementing either one. He chose to build the four houses, and said that the estimated cost of implementing the 106 agreement at perhaps around £70,000 was entirely unreasonable for such a small development, without making reference to the 90+ completed houses.

The cost of this S106 obligation was definitely taken into account when Mucklow agreed the price at which the land, building sites and permissions were sold to Hyperion homes, whose principal, Richard Sharratt discussed the land and the footpath obligation with the Directors of this Trust. After erecting the two houses on the Tipton Road site, Hyperion then sold on the land and the Dearne court site to I P Developments, who subsequently erected the four houses which were recently completed.

The S106 obligation on these two sites was accepted by Mucklow in 1998 as being justified by the estate of 90 dwellings, and this obligation was then accepted by Hyperion homes, and it appears highly likely that the cost concession of this S106 obligation was then passed on to I P developments. It is therefore considered that the obligation should have remained attached to the Dearne Court site, even though the permission was changed from 3 to 4 dwellings.

CONCLUSION

If the Dudley Legal Department has ruled correctly then a 106 obligation cannot remain attached to a residential development if subsequent changes are made to a part of that development, after which a new planning obligation must be calculated, based upon the “new part of the development”, thereby cancelling the previous obligation which can no longer be implemented.

This appears to be a magnificent planning loophole which could allow any developer to sign a 106 agreement in the knowledge that he can subsequently reduce or remove that obligation by making a minor change to a later phase of the development.

Is this interpretation correct, and is a planning law intended to provide such a loophole?

If the interpretation of planning law is so complex, would it be helpful for us to go to the planning ombudsman to get an official definition on this subject?

Recommendation

That the Developer/ Landowner be asked to urgently restore the public path to its former state to enable its use once again by the public.

If the removal of the S106 Obligation is allowed to stand then the Developer/ Landowner should also be requested to work with Dudley M B C and grant permission for the path to be drained and surfaced, in accordance with plans linked to the S106 agreement, but funded by Grants to be obtained by Woodsetton Charitable Trust.

David M Bates, Secretary, WCT

Woodsetton Charitable Trust

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Registered office 16 Westerdale Close
Woodsetton
Dudley
West Midlands
DY3 1AR
www.woodsetton-trust.webs.com

Honourary President, Dr David Parks-Bowen

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